

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

UNITED STATES OF AMERICA,)	
)	3:11-CR-00131-LRH-VPC
Plaintiff,)	
)	
v.)	<u>ORDER</u>
)	
ENRIQUE BUENROSTRO,)	
)	
Defendant.)	
_____)	

Before the Court is Defendant Enrique Buenrostro's ("Buenrostro") Motion for Reconsideration of the Court's Order Denying the Joint Stipulation for a Reduction of Sentence under 18 U.S.C. § 3582(c)(2). Doc. #186.¹ On July 9, 2012, Buenrostro pleaded guilty pursuant to a written plea agreement to one count of distribution of heroin near a school, and aiding and abetting in violation of 21 U.S.C. § 841(a)(1), (b)(1)(C), 860, and 18 U.S.C. § 2. Doc. #137. The Probation Office submitted a Presentence Investigation Report on April 18, 2012, recommending that the Court impose the high end of the sentencing guideline of 63 to 78 months. The Court agreed, and imposed a sentence of 78 months on July 10, 2010. Doc. #140.

On September 18, 2014, Buenrostro filed a Motion for Reduction of Sentence pursuant to 18 U.S.C. § 3582(c)(2), requesting a two-point reduction of his total offense level under the statute. Doc. #173. The parties filed a Joint Stipulation for a Sentence Reduction pursuant to

¹ Refers to the Court's docket number.

1 18 U.S.C. § 3582(c)(2) on January 22, 2015. Doc. #180. The Court denied Buenrostro's motion
2 and rejected the joint stipulation on April 27, 2015, finding that the sentence imposed was
3 appropriate notwithstanding § 3582(c)(2) due to "the relevant conduct attributable to the defendant
4 as set forth in the Presentence Investigation Report, as well as the violent nature of the defendant's
5 prior criminal history." Doc. #184.

6 Buenrostro filed his Motion to Reconsider on May 1, 2015. Doc. #186.² Buenrostro
7 requested that the Court reconsider and exercise its discretion to reduce his sentence. A court can
8 reconsider a final judgment in a number of enumerated circumstances, and "any other reason that
9 justifies relief." Fed. R. Civ. P. 60(b); *see United States v. Okafor*, 550 Fed. Appx. 414, 414-15
10 (9th Cir. 2013) (acknowledging that defendants can file a motion to reconsider a court's denial of a
11 sentence reduction under Rule 60(b)).

12 The Court again finds that a sentence of 78 months is appropriate given the nature of
13 Buenrostro's conduct and criminal history. A number of factors contributed to the Court's
14 determination that Buenrostro was not entitled to a reduction of his sentence. These included, but
15 are not limited too, the following: (1) the large quantity of heroin involved; (2) Buenrostro's
16 involvement in multiple sales of heroin; (3) that Buenrostro sold heroin within 1000 feet of a high
17 school; (4) Buenrostro's exposure of a small child to his activities, including attempts to dispose of
18 drugs to avoid law enforcement recovery; (5) the police officers' recovery of cellular telephones
19 used to conduct drug transactions; (6) Buenrostro's status as a major conspirator in the charged
20 offense; and (7) Buenrostro's violent prior criminal history. Based on these factors, the Court finds
21 that the sentence of 78 months is sufficient but not greater than necessary to meet the objectives of
22 sentencing articulated by 18 U.S.C. § 3553(a). A sentence of less than 78 months would not satisfy
23 those objectives.

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25 ² Buenrostro's Motion included a request that the Court toll the time for filing a notice of appeal for
26 fourteen days from the date that the Court ruled on the Motion to Reconsider. The Court granted this request
on May 11, 2015. Doc. #187.

1 Accordingly, the Court denies Buenrostro's Motion to Reconsider the Court's denial of the
2 parties' joint stipulation for a sentence reduction pursuant to 18 U.S.C. § 3582(c)(2). The Court
3 also hereby lifts its stay of this case. Any notice of appeal must be filed within fourteen days of this
4 Order.

5 IT IS THEREFORE ORDERED that Buenrostro's Motion to Reconsider (Doc. #186) is
6 DENIED.

7 IT IS FURTHER ORDERED that if either party wishes to appeal, a notice of appeal must
8 be filed within fourteen (14) days of this Order.

9 IT IS SO ORDERED.

10 DATED this 22nd day of September, 2015.

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12 LARRY R. HICKS
13 UNITED STATES DISTRICT JUDGE
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